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Secrt. II-27—100,000—21-8-52.

(M)

Home (1948) Department.

M. SERIES.

G.O. No.	365
Dated	28-1-1948

[Despatch Abstract.]

Extradition To and from Jamaica - Procedure - Letter from the Government of India - Recorded

GOVERNMENT OF MADRAS
Abstract

Extradition - To and From Pakistan - Procedure - Letter from the Government India - RECORDED.

Home Department

G.O.Ms.No.365. dated the 28th January 1948.
Read the following:-

Letter from the Government of India, Ministry of Home Affairs, No. 79/6/47-Public (B), dated 13th January 1948.

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Subject: Extradition proceedings to and from Pakistan.

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With reference to your letter No. HMI,125/47/5, dated the 3rd December 1947, on the subject mentioned above, I am directed to say that Article 4 of the Indian Independence (Legal Proceedings) Order, 1947, makes special provision with regard to proceedings pending in any Civil or Criminal Court in Assam etc., other than a High Court, immediately before the 15th August 1947. Such proceedings are to be continued in the same court as if the Indian Independence Act had not been pas ed, and, for the purpose of the said proceedings, the courts concerned shall continue to have the same jurisdiction and powers which they had immediately before the said date. Further, when an order is passed by such court in the said proceedings, effect shall be given to it in a Dominion (e.g. Pakistan) ~~Palestam~~ as if it had been passed by a court of competent jurisdiction within that Dominion. It follows that, if a warrant or summons is issued by a court in Assam (other than a High Court) in a proceeding pending before it immediately before the 15th August 1947, effect should be given to it in Pakistan in the same manner as effect would have been given to it if the Indian Independence Act had not been passed. If, however, a warrant for the arrest of an accused is not issued in any such proceedings effect cannot be given to it in Pakistan without formal extradition proceedings under the provisions of the Fugitive Offenders Act, 1881.

2. As regards the judgment of the Bombay High Court referred to (copy enclosed), it seems that the attention of the Bombay high Court was not drawn to the Indian Independ nce (Legal Proceedings) Order, 1947, but the general law is as stated therein. As, however, the judgment does not decide that the general law stated therein will apply even in a case to which Article 4 of the said Order applies, there is, in the opinion of the Government of India no inconsistency between it and the opinion expressed in the proceding paragraph.

3. With regard to the point raised in para 2 of your letter the Code of Criminal Procedure extends to British India which expression under Article 4 (2) of the India (Adaptation of Existing Indian Laws) Order 1947, will be construed in India as meaning all the Provinces of India. In proceedings other than "pending proceedings" sections 73, 74, 84, 85 and 86 of the said Code cannot therefore be construed as authorising the issue of processes to areas to which the Code as in force in India does not extend, namely, the areas included in Pakistan.

No.79/6/47-Public (B) Dated New Delhi 3, the 13th Jan. 1948.

Copy together with a copy of the letter under reply forwarded to all Provincial Governments (except Assam) and Chief Commissioners for information and guidance.

Copy forwarded to the External Affairs and Commonwealth Relations for information.

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Judgment recorded by the High Court in Criminal Application for revision No.526 of 1947, in the case of Abubakar Dawood Agbotwalla, the petitioner.

P.T.O

Mr. S.G.K. Huseini, Advocate, for the applicant.

The Government Pleader for the Crown.

Mr. V.N.Chhatrapati, Advocate, for the Surety.

Coram: Chagla. C.J. and
Gajendragadkar.J.

6th November 1947.

Oral Judgment per Chagla C.J.:

This is a revisional application from an order made by the learned Presidency Magistrate, 8th Court, Esplanade, ordering the arrest of the applicant in execution of a warrant issued by the Lahore Court and directing that he should be sent to Lahore under police custody. The Order was made on the 6th September 1947 and it obviously cannot stand. On the 6thSeptember 1947 Lahore was part of foreign territory and our Courts here cannot execute the warrant of a foreign court unless there are proper extradition proceedings for the purpose. The order will, therefore, be set aside, the rule made absolute.

. . . . . .

By the Court,

Sd. S.H. Belavadi,
Deputy Registrar.

Copy of letter No.HMI, 125/47/5, dated shillong the 3rd December, 1947 from Sir Harold Dennehy, C.S.I., I.C.S., Chief Secretary to the Government of Assam to the Secre tary to the Government of India, Ministry of Home Affairs, New Delhi.

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Subject: EXTRADITION PROCEEDING TO AND FROM PAKISTAN.

I am directed to refer to paragraph 4 of the Indian Indepenaence (Legal Proceedings) Order, 1947. In accordance with sub-paragraph effect must be given within the torritories of either Dominion to any order of any Civil or Criminal Court in Bengal or Assam passed before the "appointed date" as if it had been passed by a Court of Competent jurisdiction within the Dominion. In the view of this Government during the interim period and in cases which were pending befere the 15th August in Courts of Assam, there is no necessity for extradition proceedings to secure the attendance of an accused person or witness from East Bengal, in light of these provisions. The Government of India will however doubtless have seen a report in the daily press published on November the 7th of Bombay ruling to the effect that Courts in the Indian Dominion cannot execute a warrant of arrest issued by a Court in any foreign torritory including a Court in the West Pubjab, unless there are regular extradition proceedings. The Government of Assam have not yet been able to procure a regular report of this ruling but they feel it essential at the earliest moment to secure clarification of the position from the Government of India.

2. In regard to issue of warrants and summons issued during the interim period but after the 15th August 1947, this Government conceive that as section 73 to 74 and Section 84 to 86 of the Criminal Procedure Code apply both in the Dominion of India and in Pakistan that the conclusion of a standstill agreement implies a continuance of application of xhm these provisions between authorities in both Dominions. I am to enquire whether the Government of India accept this view.

* * * *

ORDER:

R E C O R D E D

(By Order of His Excellency the Governor)

P.M.Nayak,

Deputy Secretary to Government.

To All District Magistrates.
" the Chief Presidency Magistrate, Madras.
the Inspector-General of Police, Madras.

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True copy /Forwarded /By Order

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SAS.29.1. Superintendent.

// True Copy //

Superintendent,
GK. MADRAS RECORD OFFICE.

19/5/53

19/5.